

Ashok Kumar Bagga v. Prithvi Nath Kaul (R. N. Mittal, J.)

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(7) Even otherwise, on the facts of the present case, it is clear that half of the house of Mr. Justice S. C. Mital, which he was occupying, is owned by him and the remaining half portion of the house is owned by his brother to whom he has been paying the rent at the rate of Rs. 300 per month. Thus it cannot be said that on the facts and circumstances of this case, Mr. Justice S. C. Mittal has not incurred any expenditure even though he having paid a rent of Rs. 300 per month to his brother within the meaning of section 10 (13A) of the Act.

(8) The matter can be looked at from another angle also. The provisions of section 10(13A) of the Act and Rule 2A of the Rules have to be given effect to. The Rules and the section are not in conflict with each other. Rather, the Rules are supplementary to the section. Even if the assessee's case is covered by the Rules, the assessee will be entitled to exemption. The Rules impose the maximum limit to the extent of Rs. 400 per month. Admittedly, the house rent allowance paid to Mr. Justice S. C. Mital during all the four relevant assessment years was below the maximum prescribed limit. It is equally well settled that even if two interpretations of a particular provision are possible, in that case, the Income Tax Act being a taxing statute, one favourable to the assessee would be preferred. The view taken by the Tribunal in this regard is unexceptional.

(9) For the reasons recorded above, we answer the question referred to us in the negative, i.e., against the Revenue and in favour of the assessee, with costs.

G. C. Mital, J.—I agree.

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H.S.B.

*Before R. N. Mittal, J.*

ASHOK KUMAR BAGGA,—*Petitioner.*

*versus*

PRITHVI NATH KAUL,—*Respondent.*

*Civil Revision No. 1523 of 1977*

November 23, 1979.

*East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(3) (a) (i)—Landlord occupying ground floor of the house—First*

*and second floor of the same building under occupation of tenants—Application for ejectment filed by the landlord on the ground of personal necessity against the tenants of second floor—Tenants of first floor vacating the premises during the pendency of the ejectment application—Such premises let out to other tenants during the pendency of the ejectment application—Requirement of the landlord—Whether can be said to be bona fide—Tenants of the second floor—Whether could be evicted.*

*Held*, that from a reading of section 13(3) (a) (i) of the East Punjab Urban Rent Restriction Act 1949 it is evident that if the landlord wants to make an application for ejectment of a tenant on the ground that he wants the premises *bona fide* for his own use and occupation, he is to allege all the grounds stated therein and prove them. If the accommodation on the first floor was available with the landlord at the time of filing the application for ejectment, he could not ask for ejectment of his tenant on the second floor on the ground of *bona fide* requirement. The same principle will apply if similar accommodation is vacated by a tenant during the pendency of the application for ejectment and the landlord rents out the same to other tenants. The fact of leasing out the first floor to new tenants clearly goes to show that the landlord is getting the premises vacated with an oblique motive and his requirement of the accommodation on the second floor cannot be said to be *bona fide* and, therefore, the tenant on the second floor could not be evicted. (Paras 6 and 7).

*Petition under Section 15 of the East Punjab Urban Rent Restriction Act, 1949 for revision of the order of the Court of Shri R. L. Randev, Additional Appellate Authority, Chandigarh, dated the 13th September, 1977 affirming that of Shri A. S. Sodhi, Rent Controller, Chandigarh, dated the 21st April, 1977 accepting the petition with costs and ordering the eviction of the respondent from the demised premises. The respondent is, however, granted time till 30th June, 1977 to vacate the premises. If he fails to deliver vacant possession thereof to the respondent within the prescribed period he shall be entitled to have him evicted therefrom through execution and leaving the parties to bear their own costs.*

R. L. Luthra, Advocate with H. R. Bansal, Advocate, for the appellant.

R. P. Bali, Advocate, for the respondent.

#### JUDGMENT

**R. N. Mittal, J.—**

(1) This revision petition has been filed by Ashok Kumar Bagga, tenant against the order of the Appellate Authority, Chandigarh, dated September 13, 1977.

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(2) Briefly, the facts are that Prithvi Nath Kaul is the owner of the house bearing No. 1668, situated in Sector 34-D, Chandigarh. He leased a portion of the house consisting of two rooms, a kitchen and a veranda with attached bath room and latrine (2nd floor) at a rent of Rs. 115 per mensem, exclusive of electricity and water charges, to the tenant. He further said that he had two sons studying in 8th and 10th classes and three daughters studying in B.A., higher secondary and 1st primary classes and that the accommodation with him was 4 rooms, which was insufficient for the needs of his family. He, therefore, filed an application for ejectment of the tenant under Section 13 of the East Punjab Urban Rent Restriction Act (hereinafter referred to as the Act) for ejectment of the tenant on two grounds, namely, that the tenant had not paid the rent and that he required the portion occupied by the tenant for his personal use.

(3) The application was contested by the tenant-respondent. He, however, paid the rent of the house along with interest and costs assessed by the learned Rent Controller on the first date of hearing. It was accepted by the landlord under protest saying that it was insufficient. The learned Rent Controller framed the following issues:—

- (1) Whether the premises is required for *bona fide* personal requirement of the petitioner ?
- (2) Whether the respondent is liable to be evicted on the ground of non-payment of rent ?
- (3) Relief.

(4) He held that the landlord required the premises *bona fide* for his own use and occupation. He further said that issue No. 2 was not pressed. Consequently, he in view of findings on issue No. 1, allowed the application and ordered the ejectment of the tenant. An appeal was filed by the tenant before the Appellate Authority who affirmed the order of the Rent Controller and dismissed the appeal. He has come up in revision to this Court.

(5) The only contention of the learned counsel for the petitioner is that the house in dispute consists of ground floor, first floor and second floor. The accommodation on the ground floor consists

of four rooms. The accommodation on the first floor is the same as that on the ground floor. On the second floor there are two rooms, a kitchen and a bath-room. He argues that there were three tenants on the first floor and they vacated the premises during the pendency of the present petition but the landlord gave those portions on lease to other tenants at exorbitant rents. He further argues that in case the landlord *bona fide* required further accommodation he could have occupied the rooms on the first floor. According to the learned counsel for the petitioner, the petitioner is being ejected in order to get enhanced rent of the second floor. On the other hand the learned counsel for the respondent has vehemently argued that the landlord can get that portion of the house vacated for his needs, which he thinks is suitable for him. He submits that the daughters of the respondent were grown up and, therefore, he wanted a separate portion for them. He further contends that the tenant cannot dictate the landlord to occupy those portions which are not considered suitable by him.

(6) I have heard the learned counsel for the parties and given thoughtful consideration to their arguments. It is not disputed that the tenants on the first floor vacated the three portions occupied by them during the pendency of these proceedings and the landlord inducted new tenants in those portions. It is also not disputed that there are four rooms on the first floor. When some portions of the first floor were vacated the landlord could conveniently occupy those portions. The contention of Mr. Bali that the respondent has grown up daughters and that they could not be asked to occupy the rooms on the floor which was shared by other tenants, is untenable. On the other hand the rooms on the first floor could have been more suitable if these were to be given to the daughters. In the alternative the respondent could have offered the rooms which were vacated on the first floor to the petitioner who is a tenant on the second floor and get his portion vacated. He, however, did not choose to adopt either of the courses but gave the accommodation on the first floor on rent to new tenants. It is true that the respondent has two sons and three daughters besides his wife and the children are studying in different classes. But the fact of leasing out the first floor to new tenants clearly goes to show that he is getting the premises vacated with an oblique motive. It cannot be disputed that the *bona fide* requirement of a landlord has to be found out on the facts and circumstances of each case. After taking into consideration the circumstances of the present

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case, I am not satisfied that the landlord *bona fide* requires the premises for his own use and occupation.

(7) The language of Section 13(3)(a)(i) of the Act also warrants the above conclusion. It will be advantageous to read the said section which is as follows :—

“13(3)(a). A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession—

(i) in the case of a residential building, if—

(a) he requires it for his own occupation; and

(b) he is not occupying another residential building, in the urban area concerned; and

(c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area;

(d) \* \* \*

From a reading of the aforesaid Section it is evident that if the landlord wants to make an application for ejection of a tenant on the ground that he wants the premises *bona fide* for his own use and occupation, he is to allege all the aforesaid grounds and prove than. See *Manke Ram v. Shrimati Saraswati Devi* (1). If the accommodation comprised in two rooms on the first floor was available with the landlord at the time of filing the application for ejection, he could not ask for ejection of his tenant on the second floor on the ground of *bona fide* requirement. Therefore, the same principle will apply if similar accommodation is vacated by a tenant during the pendency of the application for ejection.

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(8) The learned counsel for the respondent has made reference to *P. Gnanasambandam v. Radhakrishnan Pillai*, (2), *Manohar Lal v. Mool Chand* (3), and *Shri Surjit Singh v. Shri I. J. Chawla* (4).

(9) In *P. Gnanasambandam's case* (Supra) a learned Single Judge of Madras High Court observed that where the requirement of landlord for additional accommodation is *bona fide* it is not for the tenant to say as to which of the portions in the premises should be taken by the landlord. Similar observations were made in *Manohar Lal's case* (supra). The above observations are unexceptionable but the facts of both the cases are distinguishable. Therefore, the respondent cannot derive any benefit from these cases. In *Surjit Singh's case* (Supra), on which great reliance has been placed by Mr. Bali, the landlord made an application for ejectment of his tenant from second floor which comprised of one *barsati*. The landlord was in occupation of the ground floor. During the pendency of the ejectment proceedings the first floor which was one unit and comprised of a drawing-cum-dining room, two bed rooms, one kitchen, one bath room and one store, was vacated by the tenant. The landlord gave that portion on lease to another tenant on rent of Rs. 550 per month. The rent of the 2nd floor at that time was Rs. 275 per month. A contention was raised on behalf of the tenant that the order of his ejectment was bad as the landlord had let out the first floor which had been vacated after the filing of the petition, to another tenant. The contention was repelled by the learned Judge. It is evident from the perusal of the facts in that case, that there was only one tenant on the 1st floor and the accommodation with him was much more than that required by the landlord. That portion was again let out to one person. The learned Judge also held that the landlord required only one room and not three. In this case the accommodation which is available on the second floor was also available to the landlord on the first floor. In the circumstances the observations in that case are of no help to the respondent.

(10) For the aforesaid reasons, I accept the revision petition, set aside the order of the Appellate Authority and dismiss the application for ejectment. No order as to costs.

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H. S. B.

(2) A.I.R. 1973 Madras 138.

(3) 1976 R.C.R. 236.

(4) 1978(2) R.L.R. 736.